

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DONALD AGEE, JR. et al.,  
  
Plaintiffs,  
  
v.  
  
JOCELYN BENSON, et al.,  
  
Defendants.

Case No. 1:22-CV-00272-PLM-RMK-JTN

**CERTIFICATE REGARDING  
REQUEST FOR MOTION  
CONCURRENCE**

In compliance with W.D. Mich. LCivR 7.1(d), the Michigan Independent Citizens Redistricting Commission and its members<sup>1</sup> (collectively, the Commission), represent the following reflect the efforts undertaken by counsel to attempt to gain concurrence prior to filing their *Motion Of The Commission To Strike “Supplemental And Rebuttal” Report Of Sean Trende And In Limine Precluding Plaintiffs From Offering The Report At Trial* (the “Motion”):

1. On September 12, 2023, Plaintiffs disclosed for the first time an intent to serve a surrebuttal report from Mr. Trende. Plaintiffs did not disclose the subject matter or scope of the proposed new report.

2. The Commission’s counsel twice, on September 12 and September 26, requested the legal basis for Plaintiffs’ position that a new report from Mr. Trende was proper. Plaintiffs did not provide such a basis in response to either email.

3. In the evening of September 26, 2023, Plaintiffs served the new report from Mr. Trende (defined as the “September Report”).

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<sup>1</sup> The official-capacity defendants are Douglas Clark, Juanita Curry, Anthony Eid, Rhonda Lange, Steven Terry Litt, Brittini Kellom, Cynthia Orton, M.C. Rothhorn, Rebecca Szetela, Janice Vallette, Erin Wagner, Richard Weiss, and Dustin Witjes.

4. After reviewing the September Report, the Commission conferred with Plaintiffs' counsel by electronic mail on October 2, 2023, soliciting Plaintiffs' position on this motion, requesting copies of the facts and data supporting the new report, and attempting to resolve the dispute. *See* Mot. Ex. C., Email String Dated October 2-3, 2023, ECF No. 89-3.

5. On October 3, 2023, Plaintiffs responded. *Id.* Plaintiffs did not concur with Defendants' proposed motion and did not agree to withdraw the new report. Plaintiffs did articulate a basis for their position supporting the service of the September Report, but in the Commission's view did not accurately characterize the scope of the report. Finally, Plaintiffs did not provide the facts and data supporting the September Report. Among other things, the Commission has not been provided block-assignment or shape files of the new demonstration plans disclosed in the September Report.

Dated: October 4, 2023

Respectfully submitted,

/s/ Nathan J. Fink

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Lange, Steven Terry Litt, Brittini Kellom,  
Cynthia Orton, M.C. Rothhorn, Rebecca  
Szetela, Janice Vallette, Erin Wagner, Richard  
Weiss, and Dustin Witjes, each in their official  
capacities as Commissioners of the Michigan  
Independent Citizens Redistricting  
Commission*